Supreme Court, U.S.
FILED

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1996.

Moctezuma Flores,

petitioner,

vs

FMC. Corp. et. al.

respondents,

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS (6th Circuit) OF THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

Moctezuma Flores
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San Jose, California.
95125.
Phone (408) 293-3527.
(Plaintiff appearing
In Propria Persona.)

QUESTIONS PRESENTED

45 DAYS TIME LIMITATION WHERE TRANSFER -- OCURRED JANUARY 27, 1994; AND REQUEST WAS -- MADE ON FEBRUARY 8, 1994, DOES NOT REFLECTS- 45 DAYS WAITING TO REQUEST DISCOVERY.

ALLOWANCE TO SET-ASIDE "ENTRY OF DEFAULT" IN TERMS OF "DEFAULT JUDGMENT" AS WHERE "DEFAULT JUDGMENT" NEVER TOOK PLACE. (RIGHT JUDICIAL PROCEDURE HEREIN AS APPENDIX 82).

ALLOWANCE OF DEFENDANT's "SUMMARY JUDGMENT" WITHOUT HAVING ANSWERED COMPLAINT BY ANY DEFENDANT: WITHOUT DISPOSING OF THE - ENTIRE ACTION AND NEITHER PRESENTING AS AFFIRMATIVE DEFENSE ON THEIR's "UNDISPUTABLE MATTERIAL FACTS", IN CONFLICT WITH THE CASE OF: (Wilson vs. Blue Cross. 222 Calif. App. 3d. 660.) (Included herein as Appendix 88.

QUASHING SUMMONS FOR NOT HAVING ON ITS - FACE "PROOF OF SERVICE", MAKES THE COURT ADOPTING A NEW JUDICIAL PROCEDURE IRRECOCILABLE WITH THOSE INSTRUCTED ON SUMMONS i,e. summons prey; 'a letter or phone call will not protect you." (Appendix 33)
MEANWHILE, THE COURT ACCEPTED AN ANGRY LETTER BY DEFENDANTS AS FULL ANSWER. (App. 42)

ONE YEAR TIME LIMITATION TO FILE A LAWSUIT FROM THE DATE OF JOB TERMINATION, IN CONFLICT WITH THE DECISION ON: (Alvin vs. FESCO: 733- FED. 2d. 622).(Included as appendix 87).

PERJURY COMMITED AND SUBMMITED TO COURT BY- RAMOS AND CEDERHOLMS, UNMENTIONED BY COURT.

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OPINION BELOW

The opinion of the Court of Appeals re-- printed herein in Appendix 1; Petition for rehearing by Ct. of Appeals as Appendix 21; extension of time for granting or denying-- review by Calif. Supreme Ct. as Appendix -- 22; Supreme Court of California denying re view as Appendix 23 included herein.

JURISDICTION

Letter sent by the U.S. Supreme Court -- on December 3th 1996, allows plaintiff 60-- days to submmit his Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVES

THE FIST QUESTION CONCERNS THE CHARACTER OF IMPOSSING 45 DAYS TIME LIMITATION TO-- PLAINTIFF TO REQUEST DISCOVERY. INCLUDED HEREIN AS APPENDIX 71.

THE SECOND QUESTION CONCERNS THE CHRACTER OF SETTING-ASIDE DEFAULT BASED ON AN ATTOR NEY's TESTIMONY INSTEAD OF THE DEFENDANT's- TESTIMONY; AND SUBSTITUTION OF "ENTRY OF DEFAULT" FOR A "DEFAULT JUDGMENT".
THE LAW GOVERNING THE RIGHT PROCEDURE: Code of Civil Procedures §473.5 IS INCLUDED HERE IN AS APPENDIX 75 & 76.

THIRD QUESTION CONCERNS THE ALLOWANCE OF SUMMARY JUDGMET FILED BY DEFENSE WITHOUT-- HAVING ANSWER CHARGES OF COMPLAINT AND __ ALSO WITHOUT DISPOSING THE DEFENSE OF THE __ ENTIRE ACTION.

FOUR QUESTION CONCERNS QUASHING SUMMONS FOR NOT HAVING ON ITS FACE THE STATEMENT "PROOF OF SERVICE".

FIFTH QUESTION CONCERNS THE DENIAL OF THE TRIAL COURT IN ALLOWING ANSWER TO THE-DEFENDANT's "UNDISPUTABLE MATTERIAL FACTD" FOR NOT HAVING SAID ANSWER THE MAGIC WORDS AGREE OR DISAGREE.

SIXTH QUESTION CONCERNS THE ONE YEAR -- LIMIT TO FILE A LWSUIT, CLEARLY IRRECONCILA BLE WITH OTHER PUBLISHED CASES & STATUTES.

STATEMENT OF THE CASE

Following, plaintiff very briefly is going to explain the reason of his request for a-- Writ of Certiorari directed to this Court.

Plaintiff worked for FMC Corp. as cad-platter from 1983 until he was terminated. (1992) Until 1991, plaintiff received but congratulations, prizes, diplomas for his oustanding -- work performance and preesentism.

This tratment quickly changed right after plaintiff complained in March of 1991 about- drugs distribuition on his area. Supervisor- Sally Jenks took note of plaintiff's problem- and promised to go later and or to have a private meeting with plaintiff so he could ex -- plained and describe & or point-out who were- the outsiders .

Sup. Sally Jenks never showed-up or made any intent to comunicate with plaintiff.

Plaintiff all these years was at work doing his job in a very old equipment an machinery. As consequence, authomatic machine and crane- used on the place was very often "put of order for which FMC had expert personal in the event of those downs. We, the part processors never had any direct or indirect role in the fixture of the equipment. (plaintiff never disagree- with this practice).

Plaintiff during his assignment as cad-platter, had to report around FORTY caustic spills. (for one plaintiff got fired). They always were detected about 1 or 2 Hrs. latter on the shift, since plaintiff had to load-parts for degrease or de-rust everyday. It -- took him from 1½ to 3 hrs. everyday to star processing parts inside.

Plaintiff at one time suggested not to - report those spills further since they seemed to be endless. Supervisor insisted they had- to be reported.

With respect to drugs and the complaint- ignored by Sally Jenks, plaintiff did not - gave-up and insisted to managerial employees to remove plaintiff from the area or to -- eradicate the problem. This time plaintiff-- directed his complaint to Gerald Cederholms. This man ignored plaintiff for which I next time complained to Sup. David Lee who said - he knew the problem existed but he could not do anythink because he depend on his salary to pay the rent.

Following those complaints, an employee's name Ruano one day to plaintiff's place and without hesitation and in front of a supervisor and two other employees, Ruano called-- plaintiff: "Mother fucker; son of a bitch;- and other terms for which plaintiff suggested

supervisor to stop him. and plaintiff asked supervisor: Is he crazy or What?

Later, supervisor returned to plaintiff & said Ruano had said he said what he said -- because he did not like plaintiff. He further said he could not do anything about it and - if plaintiff wanted, he could go to his Union that maybe the Union could do something about it.

Secon day in a row, (following day) and-- while plaintiff was driving a fork-lift, -- Ruano approached to the for-lift and putting a foot underneath each whell of the for-lift (one under front tire and another foot under the rear tire) he challenged plaintiff:

"Come on sucker, move the forlift and -- smash my feet; come on, I want to see it.

Plaintiff one more time reported to the-- same supervisor who one more time came --- to plaintiff's place of work at night and - said: "I am sorry, but I can not do anything about it; I spoke to my supervisor and he -- said we can not do anything. If as I told -- you, you want to go to your Union, maybe they can help you. We do not.

Third day in a row, Ruano and while plaintiff was selected parts to process, he took-- possession of the forklift by throwing plain--

tiff's keys to the floor and star driving the forlift around and around with no purpose. Plaintiff went to Sup. office and another person was in there. Carlos Ramos.

Both men came out and ordered Ruano to-- return forklift.

Later that evening, plaintiff was called to supervisor's office and was told by Carlos Ramos that he had analyzed the whole -- situation and had concluded that it was -- plaintiff the one responsible for the disputes with Ruano for which Ramos extended to plaintiff a corrective action sheet of paper in which he concluded plaintiff was the responsable for not wanting to share a forlift.

Plaintiff protested and referred that he was not going to stop complainning about the illegal activities on his area until he -- was removed, and even after, if they choose somebody else to blame, plaintiff was going to come out and make the right accussations.

Ramos reaction was that he felt so offended by plaintiff and also threatened.

Following day, plaintiff was again called to Supervisor's office and was told to re-- turn the previous corrective action in exchenge for a new one that readed: Plaintiff has sustained injuries to Ruano to the ex-- tend tha Ruano had to be hospitalized.

Ramos rationalize by saying that even-
though everything was unreal, he was doing-
this because the previous day, he had not--
seen any remorse on plaintiff's face.

He continued: If you accept it, you can go back to work without worry about anything. - On the contrary, if you do not accept it, I will refer the case further and you may end-up suspended and up to terminated.

Plaintiff refused to share those perju--
rious testimonies and end-up suspended des
pite the fact Union had conducted a private investigation in which all witnesses testi-
fied plaintiff had not touch Ruano.

On February 1992 and after an ankle's --
surgery, plaintiff returned to work after -
several months of abscence. Plaintiff noti
ced right away that the wave of outsiders-
kept on comming to buy drugs at the area.

On May 1992, plaintiff had a discussion with two ladies who were in the room with-
those transactions for which plaintiff said:

"Ladies, better find a new place to do-
what you are doing. I am tire of this situa
tion and I am going to continue complaining even outside.

The two ladies leaved for a while but --
later returned with about a dozen of folks-

who started laughing so loud.

At that moment, a Gen. Supervisor (Tom Silva) appeared in the area and inmediatly plaintiff referred all those persons in --- there.

Silva did not answer; he looked at the-- bunch of people and when he was leaving, - he looked at plaintiff with a lot of anger.

Following day, plaintiff had problems -- with the old machine and finally was "down".

Following day, plaintiff was called to Gerald Cederholm's office and was asked about the machine "down". (sometimes the machine was down three times in a single week).

Plaintiff notice none of the employees present knew or had any experience at all-- in fixing the equipment.

Ciderholms then continued: "I hear -- you called the attention on two ladies at - the area. Is that true?

Plaintiff's answer was: Yes.

Ciderholms continued: "Let me tell you you-- are not here to call the attention on anybody; and I do not want to hear that again.

Plaintiff reply was: "as long as you -- keep me working in that area and under the- conditions, I will continue to complain. -- You know that those activities make the pla

ce unsafe.

Ciderholms reply was that he was going-- to move me but that meanwhile, he had decided to name Annis, and Delara (Peter) his masters employees. That meant, plaintiff had to follow instructions from those co-workers.

Plaintiff refused and later, shop-stewardess discussed the matter with Cederholms -- about this new decision.

Cederholm used as excuse the fact the -- machine had been "down" the previous day & that plaintiff's opinion about the "down" was diferent of that of Delara.

Union emphasized: "You can not rely on fixing the machine on somebody who has no-experience, training, background and who -- has depended 100% on the experts. Delara-- has never fixed anything, he, same as Flores has experience in processing parts, nothing else."

Apparantly Cederholms did not want to -- understand the reality. Later, Shop-stewardess talked to plaintiff:

"This man is wrong, he can not make "masters employees" overnight. Delara is far -- from being qualified to fix such complicated equipment. You do not have to obey instruc -- tions from another employee.

Same day Cederholm sent the instruction through the leadperson that plaintiff had to work on phosphate.

Plaintiff protested due to fact I had not ever been working in that area and had no -- training.

Leadperson waited for an answer and plaintiff had to accept since early that day that man Cederholms had told plaintiff that any-diobedience was against plaintiff and he -- could suspend or terminate plaintiff at any time . That he had permission from his boss.

Plaintiff received mild instruction -- from leadperson but plaintiff could not do anything due to the fact the tank plaintiff had been assigned to work with, was out of-- compliance: The water level was so high; the air was so strong. Plaintiff turned a valve because the acid was splashing outside the - tank due to the air. Plaintiff did this move very gentle and careful due to the fact that: "The two valves were identical and had no -- sign indicating which was air and which was water. Secondly; plaintiff could instead of-^ shouting down the valve, oppenning more.

Plaintiff move one valve very slightly- and when the air did not change, he moved it back to its original position. Then, he moved

the other one and happened to be the air-- valve.

Plaintiff did not process anything due to water level. About five minutes later, lead person approached to plaintiff an to tell-- him that plaintiff had created an spill.

Plaintiff did not take that seriously and answered smiling: "not me, I was there but- for only a couple of minutes."

Plaintiff expected recriminations for not having process the parts there as told; but- the leadperson did not said anything.

Later, when plaintiff was in his usual-- ocupation, Supervisor Tom Silva approached- and told plaintiff to go home; that he (sup.) was going to make an experiment on the cad- plate area.

Plaintiff went home and the following day- when he reported to work, he was given the-- news that supervisor Cederholms had issued a corrective "final warning" against, because plaintiff was the responsible of an spill --- that ocurred on phosphate.

Inmediately, plaintiff and shop-stewardess went to discuss the situation with Cederholms who said:

"The fact this man walked on the plataform of phosphate, is enough for me to conclude he is reponsible,"

Stewardess insisted("Besides how can you -- conclude that in two minutes he spent over -- there he could create an spill of 3,000 gal.?

Stewardess continued: "It was your res-- ponsability to call the Emergency Responding Team to make an investigation and determine- the reasons of the spill; you did not said-- anything; none of us saw anything."

Cederholms answer was: "Fuck the ERT -- team; and anybody on this man's side. (plaintiff). all you want me is to cancel the co-- rrective act; but it will stay."

Stewardess continued: " You know very well is in the contract you can not assign a person to work alone; much less as you did, assign-- persons to work on dangerous areas in which -- they do not have experience and they have not work before."

Cederholms answer was: "Get-out; get out-- of my office".

Stewardess insisted: "At least what you can do is come and hear what Mr. Flores did on -- phosphate and after lisent, you can discuss of what was done wrong."

Cederholm answered: "You have 60 seconds- to leave my office or I will call security -- to put you both with your feet on the street".

He continued: " I am not going to discuss my decisions or hear the nonsenses of a person like Moctezuma Flores".

Following day, Stewardess talked to Sup.- David Lee who said he did not know of why -- plaintiff was assigned to work in an area he had not worked before; and promised to talk -

to Cederholm and to pull-out or lower the punishment.

Following day, Sup. David Lee returned- and expressed to stweardess and plaintiff -- that Cederholms did not want to talk about-- it. All he said, was that the punishment --- will stay.; and to confirm his decision, he gave me this document: The document readed - among other things:

Type of Action: "Final warnning",

ACTION THAT HAS BEEN OR WILL BE TAKEN TO PREVENT A RECOURRENCE OF THIS TYPE OF SPILL?

"Disciplinary action; "final warning".

(App 29-30).

Right after this outburst of Cederholms- and the conditions under which plaintiff was forced to work, plaintiff communicated to a- Drug Enforcement Agent who suggested to --- plaintiff to write a letter to somebody else at FMC. He remarked: "Do not send it to Carlos Ramos or Jerry Cederholms.

Right after plaintiff sent the letter to Sup. Bianca Giammanco, defendant Carlos Ramos made three phone calls in three consecutive days each day suggesting plaintiff

to write a new letter to Giammanco saying - that everything was a misunderstanding of-- drugs distribution.

Plaintiff refused to Ramos suggestion &- Ramos stated he was to gave a report to Mrs. Giammanco and that he was going to tell her nothing was true and she was going to believe him, not me.

On June 1992 and contrary of what the -- Union had stated to Cederholm of not to -- assign employees to jobs without the required 400 hours training and or to leave --- anybody working alone on the plant suddenly one evening without notice, plaintiff found himself working alone again. Plaintiff -- look for help and explanation of what was - going on. Plaintiff could not run the whole place effectively in which there were needed at least 10 persons.

Plaintiff could not find any help; nor-- he had a phone or a number to call; neither was any supervisor on the plant. FMC had - claim David Lee was a supervisor on the area; but FMC has enough experience to name supervisor to a person like Mr. Lee who only -- showed-up every week on Wensday to deliver - checks to employees and not to be be seen -- for another week.

Plaintiff was fired for an spill that -- ocurred on that day of June; an spill like- the forty spill plaintiff had previously -- reported.

Right after plaintiff's termination, -- FMC charged plaintiff with misconduct; but due to FMC uncapability to demostrate the alleged "misconduct", the Unemplyment Appeal Board reversed the allegations based on the abstract.

On February 2 1993, an arbitration took place in which later plaintiff knew, this arbitraror was not even impartial; but basically his determination were directed to reverse the decision of the judge of the Unemloyment Appeal Board. He never informed plaintiff (as it was his responsability) - about his decision and when plaintiff called to his office, he never returned any call & he was also said by the secretary that he- live in another city.

When plaintiff could not obtain any infor mation from this man, plaintiff contacted - the attorney representing plaintiff who also never returned any or plaintiff's calls; -- then plaintiff called the Union Hall to Mr.- Ed Jacksich; and then a certified letter to the same man. No answer.

Finally, plaintiff sent a certified letter

to the National Labor Relation Board in --- which plaintiff explained about the stru-- gles to obtain information about the arbir tration's result. The NLRB put the pressure on the Union; because a few days later --- plaintiff received such information from the Union. (On September 30 1993); Then, plain- tiff submmited his lawsuit on December 30; 1993.

On late January 1994, defendant's counsel transferred the case from Superior Court to Federal Court;

On February 1994, plaintiff requested produc tion of documents and relevant information - to FMC. (denied).

On March 23 1994, defendant and as defen dant Gerald Cederholms denied access to -- plaintiff for relevant information.

Then, plaintiff moved the Court and subm mitted his complaint about request for docu mentation and relevant information on May- 18 1994;

on June 20 1994, Judge Infante decided on plaintiff's favor and order FMC to release- said information on July 1st 1994;

FMC diobeyed the instruction of Judge -- Infante. The Case was also remanded to the-- Superior Ct. on July 15 1994.

On July 6 to 15 1994, plaintiff made 5 or

6 phone calls to the attorney in charge to release the information requested; that --- attorney never returned the calls for hich plaintiff filed a new petition and complain to the Superior Ct. On August 1st 1994;

Plaintiff's request was denied by commissioner Jessica Frieschling on basis that - plaintiff was like a doctor practicing medicine without title.

Later plaintiff notified trough paid service about the Case Managment Conference scheduled in which none of the defendants served with summons and complaints shoed-up.

Neither any defendant submmited any -- answer to complaint as instructed on the -- summons.

On December 21st 1994, and after not - having made their required "general appearance the defendants, plaintiff entered -- default against defendants.

Not even after enter the default and - proper notifications made to all of them,- defendants adamantly remained silent for -- which plaintiff scheduled a date for "De - fault Judgment".

Defendants had 30 days to answer the - default; an extension of time could be used (15 days) if the defendants show a good -- reason for the petition.

Herein, defendant's counsel filed an untimely petition on February 6th, 1995; -- which is plagued of errors since the law-- requires defendants had to submmit an answer and under oath and also within the -- 30 days from the date of the default was-- entered in Court. Also defendants had to - submmit along with their answer a proposed answer they had submmited.

None of the above took place. Plaintiff believes the Court did not follow the -- required Judicial Procedures.

REASON FOR GRANTING WRIT

The decision given by Court of Appeals - (App. 1 trough 20) denying plaintiff's re -- quest of information and Documentation from defendant and also the Court of Appeals deci sion to set-aside default, deprives plainti- ffs right of "Due process of Law" he is en- titled under the XIV Ammendment of the Cons titution.

A. The decision of the Court in impo ssing 45 days time limitation for- plaintiff to request discovery and relevant information from defendant relyies on the abstract unumbrelled by any Law.

On the Court of Appeals opinion (App.15 & 16) asserts had to file a motion on the -- field of discovery 45 days after FMC's res-- ponse.

Defendant's counsel transferred case to- Federal Court on January 27, 1994; obviously this is not the response referred above.

On February 8, 1994, plaintiff sent a -- letter to defendant requesting discovery. -- (App. 82).

Asanswer to this letter, defendant Gerald Cederholms acting as defendant, denyies plain tiff his request . (APP 43 & 44) This happe ned on March 23, 1994.

Upon said answer, plaintiff moved the --

Court and file complaint (April 21, 1994) and a hearing was scheduled for June 20, 1994 & Federal Judge order defendant to produce part of that request on or before July 1st 1994. (App. 31 & 32).

Defendant disobeyed the Judge instruction and plaintiff called defendant's counsel -- Approx. July 6th to July 15th., 1994. but - no phone call was answer.

After case was remanded, On August 1st 1994, plaintiff referred the disobedience at the Superior Ct.

During the meeting on August 27th 1994, Comissioner Jessica Frischiling reversed -- Federal Judge decision on basis and or her- opinion that plaintiff was like a doctor -- practicing medicine without title.

So, the 45 days limitation asserted, do not fit in the procedures made by plaintiff.

Neither is any Law refering 45 days limitation.

Further, defense's counsel argues this Law was ammended back on 1987.

This is a clear misconception of the -- ammendment that took place on 1987.

Section 2023 ammended in 1987 refers to 45 days limitation when disobedience ocurred. (App. 71).

Herein, disobedience took place on July 1st, 1994; several phone calls follow on -

the same July; and Court was notified on-- August 1st., 1994.

Undisputable evidence submmited herein, clearly reflects plaintiff not at anytime- waited 45 days to act; neither there is a violation of the 1987 ammendment.

B. Setting aside default do not fo-- llow the usual normal Judicial -- procedures prescribed by Law.

On the Court of Appeals decision App. 16- & 17, Ct. allows the set-aside default on - bais of inadvertence, surprise etc.

However, several issues have to be consi dered. (i.e.)

(1) Court assertion of "default judgment" can not be apply herein since the case rea- ched but only the stage of "Entry of default" and therefore it was the responsability of defendants, (not attorneys) to present their proposed defense and under oath.

(2) Since March 23, 1994, Gerald Ceder holms was already acting as defendant of the action. (App. 43 & 44).

(3) A week after service of summons & complaint took place, defnse Counsel Susan B. Burr sent an angry letter to plaintiff - for the service rendered. (App. 42).

(4) Later the same lady submmits in Court a false testimony refering inadver

tence and surprise. (App. 57 & 58) however, the Court of Appeals considers insufficient the evidence before them to bar pleadings- of inadvertence and surprise.

C. Allowance of defense's petition -- for summary judgment without having answer complaint, clear departure - from the normal Judicial Procedures.

Defendants refusal to answer charges on- complaint, does not give Court the power -- needed to allow any summary Judgment; put- aside default; allowance to quash summons; and decide on the defense's favor as when - no defense is before the Court.

D. Quashing summons for not having -- on its face "Proof of service" and the person served, out of normal- judicial procedures.

Court of Appeals on Appendix 20, argues -- the face of the summons do not recite to whom the service is made.

This creates an unnecessary atmosphere of "misunderstanding" as when a summon is but a-- document notifying the defendant(s) there is- a lawsuit agaist them and their responsabili- ty (es) to answer.

Proof of service and the person served -- is informed in a separate document called -- "proof of service" which was rendered to the three defendants and are included herein as: Appendixes 36, 38, and 40.

On the other hand, the face of the su -- mmon served and which is included here in as Appendix 33 & 34, clearly recites that a -- letter is insufficient to protect the plaintiff(s).

Herein, the Court adopts the position -- that:

a. Service of summons and complaint;
b. Angry letter from defense's counsel for said service rendered.
c. Plaintiff blamed for not answering sid letter.

Obviously the instructions of the su--- mmons and the practice of the Court. (a, b-- and c above), clear departure from instructions given and the usual normal Judicial-Procedures.

E. Allowance of the Court plaintiff did not comply & or answer the-- defense Undisputable Matterial - Fact for not having the words -- "agree" or disagree",

The fact plaintiff on his answer to --- defendant's Undisputable Matterial Facts and

which is included said answer herein as --- appendixes 59 trough 67, do not at any mo-- ment plaintiff's answer creates any ambigui ty or whether plaintiffs arises the question he agrees or disarees.

As where plaintiff answered "incorrect - statement", clearly reflects plaintiff disa grees with that evidence.

Further, when plaintiff submmited his an swer, the Trial Court did not put any objec- tion to said answer until after the defnse suggested.

If the answer was unaceptable, the Trial Court could notify plaintiff about it; like in this petition for Writ, plaintiff pleading defective, he was notified about it.

Plaintiff suggest the decision of the Ct. "no answer was filed", be reversed for failu re to express any obvious and or big error.

F. The one year statute of limita tion clearly in conflict with other decided cases.

On Appendix 3, Court of Appeals stated -- plaintiff had a year to submmit his his law- suit in Court one year from the date of his termination.

However, it is referred as example, a -- case of discrimination in which a girl su-- ffered of sexual assault in the clinic she

she was working.

The girl took more than a year to star-- exhausting her remedies outside Court and -- from there, the decision of the Trial Court- to bar her lawsuit based on the one year -- time limitation to star exhausting her reme dies outside Court.

Obviously this case of Flores vs. FMC -- is not similar with the one referred on the Court of Appeals decision.

Flores v. FMC case does not deal with-- any assault; neither is a case of discrimina tion.

In a situation of Wronful termination, -- it has been established plaintiff has two - years from the date of his termination to -- file a lawsuit. (Alvin Daniels vs. FESCO; attached herein in Appendix 87.

Besides, in the event the employee do -- not exhaust his/her remedies outside the -- Trial Court no triable issue of fact exists to considered the lawsuit. Expressed in -- (Peterman vs. International; 174 C.A. 2nd.- page 184)/ Included herein in Appendix 87.

In this Flores vs. FMC case, plaintiff- finish exhausting his remedies on September 30, 1993 and submmited his lawsuit on Decem ber 30 1993.

Plaintiff lawsuit filed well within the two years limitation impossed on the published case of Alvin. (above).

CONCLUSION

The usual Judicial Procedures and the published cases, are irreconcilable with - the opinion of the Court of Appeals.

For the foregoing reasons, petitioner - respectfully requests this Court gran his - Petition for Writ of Certiorari and the alternative grant his Petition for Writ of -- Certiorari, vacate the Court of Appeals decisions and remand for further consideration.

Respectfully Submmited,

Moctezuma Flores.
(petitioner appearing in propia persona.)

IN THE COURT OF APPEALS OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT.

Moctezuma Flores

Plaintiff and Appellant,

v.

FMC Corporation, et. al.,

Defendants and Respondents

H013825

FILED: April 19 1996. (SEALED)

COURT OF APPEALS DECISION

Statement of the Case

Plaintiff Moctezuma Flores appeals from a judgment entered after the trial court -- granted defendant FMC Corporation motion -- for summary judgment and entered judgment in its favor. He claims the court erred in- denying his motion to compel the production of documents, granting FMC's motion for summary judgment, and granting defendants GErald Cederholm, Carlos Ramos and Guadalupe- Lechuga's motions to quash service of summons and to set aside default judgment against them. We find no merit to these claims and-

affirm the judgment.

I. Order Granting Summary Judgment.

A. Background

On July 15, 1992, FMC terminated plaintiff's employment. Plaintiff filed a grivance with his union under the collective bargaining agreement with FMC, and the matter was submitted to final and binding arbitration. On April 27, 1993, the arbitrator found plaintiff had deliberately violated FMC's Rules (safetely) regulations, rejected plaintiff's explanations as not credible, and concluded he had been discharged for just cause.

On December 30, 1993, plaintiff filed a complaint against FMC and various FMC supervisors personnel, asserting several causes of action, all of which were essentialy based on a claim of wronful treatment and termination. FMC removed the case to federal district court, arguing that all claims "essentially allege a breach of the collective bargaining agreement" and thus were preemted by the Labor Management Relations ACT (LMRA), 29U.S.C. §301.

Plaintiff moved to remand the case to state court. The district court found that "[a]lthough plaintiff's complaint is rambling and unfocused and it is difficult to ascertain the precise nature of his claims, at oral argument plaintiff unequivocally stated that his only claim was that he was

terminated in violation of public policy for reporting drug use at FMC." The court found that this claim was not preempted by the LMR because it transcended his employment relationship and did not involve interpretation of the collective bargaining agreement. In a footnote, the court opined that in future proceedings, plaintiff should be held to his "stipulation" that his only claim was wrongful termination in violation of public policy. Thus, the court granted plaintiff's motion and remanded this cause of action.

Once the matter returned to the superior court, FMC moved for summary judgment. ON March 7, 1995, the trial court granted FMC's motion on several grounds: (1) plaintiff failed to file a separate statement of undisputed material facts as required by Code of Civil Procedure section 437c, subd. (b); (2) plaintiff failed to establish a triable issue concerning any of FMC's undisputed facts, which establish that he was terminated for good cause; (3) plaintiff's action is barred by the one-year statute of limitations in Code of Civil Procedure section 340, dubd. (3); and (4) plaintiff failed to establish a constitutional or statutory basis for the public policy underlying his claim of wrongul termination.

B. Applicable Principles

To suceed at trial on his complaint, -- plaintiff would have borne the burden to -- establish a prime facie case of wronful ter mination in violation of public policy, in- particular, that he was fired for complai-- ning about alleged drug distribution and -- and use by others. If he could have done-- so, then the burden would have shifted to - FMC to show a lawful basis for its decision If it could have done so, then plaintiff -- would have borne the burden to show that the proffered reason was pretextual.

In the context of a motion for summary- judgment, the burdens are somewhat reversed To succeed, FMC bore the initial burden of- showing that plaintiff's action had no meri (§ 437c, subds. (a) and (o)(2).)

C. FMC's showing in support of it motion.

To meet its burden, FMC submitted a -- statement of indisputed facts, indicating- that the terminated plaintiff for insubordi nation and causing two chemical spills. In support of its statement, FMC submitted the declaretions of Carlos Ramos, Gerald Ceder holms, and Susan Burr.

Ramos was the "Manufacturing Human Reso rrces Representative" at FMC, "responsible for dealing with all aspects of labor and e

ployment relations," and was involved in -- investigating the incidents that led to --- plaintiff's termination. In his declaration to which he attached corroborating documen-- tary support, Ramos summarized plaintiff was suspended for two weeks for insubordination i.e., Refusal to obey a direct and reasonable order without good or sufficient cause." -- In May 1991, plaintiff was involved in an al tercation with another employee, for which - both employees were disciplined. At a subse- quent disciplinary meeting, plaintiff threat ened Ramos and another employee and, as re-- sult, was suspended for three days.

On May 8, 1992, plaintiff caused 3,000 - gallons of acid solution to spill by turning on a water valve to a tankand then leaving -- the tank unattended. The spill required 50 to 60 hours to clean and cost $3,000. Under FMC rules, only trained personnel are allowed to- handle valves, and plaintiff did not have the proper training. Moreover, he refused to acept responsability for the spill. On May 20, -- 1992, he was issued a written final warning.

On June 1, 1992, plaintiff caused a se-- cond spill of 1,600 gallons of acid solution again by turning on a water valveand leaving the area unattended. Ramos investigated the- the incident, meeting with plaintiff and the union stewqrd. Ramos found that plaintiff -- decided to turn on the valve without first -- talking to his supervisors. Plaintiff was sus-

pended pending a more complete investiga---
tion.

During the week of June 10, 1992, Ramos-
was forwarded a letter plaintiff wrote to --
FMC supervisor Brenda Giamanco on May 17, --
1992, several days after the first chemical-
spill. Ramos found the letter difficult to -
understand but to him it appeared plaintiff-
was alleging that drugs were being distribu
ted in his work area. Ramos investigated the
allegation, spoke with each of the employees
mentioned in the letter, and concluded there
was no basis for plaintiff's suspicions.

In his declaration, Ramos further asser
ted that the substance of plaintiff's letter-
was aired at the arbitration hearing and at
that time plaintiff had no concrete evidence
of drug use or distribution and said he based
his letter on suspicions. Ramos further dela
clare that FMC does not retaliate against --
employees who provide information on drugs -
"hotline" to hear about employees' concerns.

On July 15, 1992, FMC conducted a disci-
plinary action meeting to review the investi
gation concerning the June 1 chemical spill.
Present were plaintiff, David Escobedo, Ceder
holm, Ramos, and David Lee. The investigation
revealed that plaintiff had failed to contact
approprate supervisory personnel prior to the

spill, deliberately turned on a water valve -

even though he knew he was not supposed to- do so, then left the area. When asked why - he did not notify Lee's, a supervisor, p--- plaintiff said he did not think of it and - would not have done so if he had. Based on-- its investigation, the prior spill, and pla intiff's overall record, FMC decided that - termination was the appropriate disciplinary action.

On July 15, 1992, Ramos notified plain- tiff in writing that his employment was -- terminated because of the two spills and -- previous suspension for disruption, failure to follow supervisory personnel, and inabili ty to work with fellow employees.

Gerald Cederholm was tha Paint and Proce ssing general Manager, under whom plaintiff worked. In his declaration, he stated that- on May 8, 1992, he met with plaintiff, the -- union steward, several supervisors and se-- nior CAD plater Peter DeLara to discuss an- incident that occurred the day before. On - that day, supervisors Tom Silva and David-- Lee investigated problems plaintiff was ha ving with "loud popping on the automatic - CAD plate line." DeLara said the problem -- arose because plaintiff had incorrectly loa ded parts. Plaintiff insisted there was -- something wrong with the tank. However, a -- check by supervisors revealed nothing wrong

with the tank and that the parts when properly loaded, the popping sound ceased. When Lee told plaintiff to load the parts the way DeLara instructed, a shouting match ensued. Concerned about a physical confrontation, supervisor Silva removed plaintiff from the work area for the rest of the shift. At the meeting on May 8, plaintiff said he would not take orders from DeLara, and when Cederholm told him he had to obey his supervisors and DeLara, plaintiff walked out of the meeting.

Cederholm further declared that later on May 8, plaintiff caused the first chemical spill. Cederholm offered to lessen the proposed disciplinary action if plaintiff accepted some responsibility for the spill, but plaintiff adamantly refused.

On June 1, 1992, plaintiff caused a second spill by turning a tank valve, even though supervisor Lee had told him not to touch the valves. Thereafter, Cederholm concurred in the decision to terminate plaintiff's employment.

Susan Burr, FMC's attorney, submitted a declaration, attached to which were excerpts of testimony from the arbitration hearing. In one excerpt, a FMC witness testified that he saw "mysterious contacts" between DeLara and others in his work area. However, he never saw any employee using, possessing, or selling drugs in his presence.

On its face, FMC's showing was sufficient to make a prima facie case for summary-judgment. The documentary evidence and declarations establish without internal inconsistency or contradiction that after investigation and disciplinary hearings. FMC determined that plaintiff was responsible for two-chemical spills and these toghether with a-prior suspension for insubordination became the basis for plaintiff's termination.

D. Plaintiff's Counter Showing and FMC's Responses

Under these circumstances, it became necessary for plaintiff to demostrate either by additional facts or legal argument that there was a triable issue as to a fact material to FMC's showing or that FMC's express-reason for terminating him was pretextual and the real reason was retaliation for reporting alleged drug use and distribution in his area. For this purpose, speculation that FMC's reasons were pretextual is insufficient to avert summary judgment.

In oposition to FMC's motion, plaintiff filed what purported to be a separate statement of undisputed facts in opposition to FMC's motion. He did not agree or disagree with FMC's statement of facts. Instead, he presented a list of facts he considered undisputed. Among them are that in 1991, he complained about drug distribution to three supervisors, none took action, and "his conditions -

of employment changed[.]" The rest of the facts in plaintiff's statement are either irrelevant or provide exculpatory versions of the incidents that led to the various disciplinary measures taken against him. In his paper, however, plaintiff admits turning the valves on tanks that resulted in spills. Plaintiff's statement was supported by a long rambling declaration, which he did not subscribe under penalty of perjury.

In response, FMC asserted, among other things: plaintiff failed to comply with the procedural requirements of a proper statement of undisputed facts in section 437c, subdivision (b); the facts plaintiff asserted were largely irrelevant and immaterial, and failed to suggest that the reasons for termination were pretextual; and the alleged facts were not supported by a legally adequate declaration.

In his reply, plaintiff argued that it was unnecessary to dispute FMC's separate statement of facts because (1) appear in this action, Ramos declaration was unreliable, (2) Ramos failed to appear in this action and (3) FMC had failed to meet its initial burden of proof. He further argued that his requirements. On the date for the hearing, plaintiff requested and was granted a continuance, his second, so he could submit more complete opposition.

Thereafter, plaintiff filed a response--

to FMC's separate statement. Plaintiff admitted two of FMC's undisputed facts: he received no training appropriate to those who handle tank valves and he filed his lawsuit on December 30 1993. Plaintiff labeled "speculative" the fact that binding arbitrator-occurred on February 2, 1993, before Arbitrator Alexander Cohn, who found that FMC had discharged plaintiff for just cause. However, as noted above, these facts are indisputably established by the arbitrator's findings. As to the remaining 44 facts, plaintiff simply-labels them "Incorrect Statement." Plaintiff also filed essentially the same set of allegedly undisputed facts he had previously filed.

E. Failure to comply with §437c, Subd. b.

Under section 437c, subd. (b), the trial court has discretion to grant a summary judgment motion when an opposing party fails to-comply with the requirement of a separate -- statement of undisputed facts. (Blackman v. Burrows (1987) 193 Cal. App. 3d 889, 893.) "In this setting, as in others involving the exercise of discretion, it is not the function of an appellate court to substitute - its own view as to the proper decision. Rather, an abuse of discretion by trial court must be shown --action which is arbitrary - or capricious or without any basis in reason." (Ibid).

Here, FMC filed a proper statement of -

undisputed facts, listing in numbered paragraphs without argumentation each material-- fact necessary to entitle it to summary --- judgment and supporting each fact with appropriate references to the evidence which creates a dispute, i.e., triable issue of the -- fact. (Blackman v. Burrows, supra, 193 Cal. App. 3d. at pp. 895-896.) However, despite- being given two continuances to prepare proper and adequate response, plaintiff filed - opposition that provided no record references in his own statement of facts do not correlate with FMC's statement so as to create triable issues concerning FMC's facts. In addition, plaintiff's declaration was not -- competent to support his own statement of - facts because it was not subscribed under- penalty of perjury. (see §§437c, subd. (d), and 2015.5.)

In short, plaintiff failed to provide- the trial court with any proper or appro--- priate guidance by which it could evaluate the basis of plaintiff's disagreement with FMC's asserted facts or determine whether-- there was a triable issue concerning them. Under the circumstances, the trial court -- was reasonably justified in basing the order granting FMC's motion for summary judgment on plaintiff's failure to comply with the procedural requirements.

In addition to the procedural defects in plaintiff's oposition, we further conclude that he failed to raise a triable issue concerning FMC's stated reasons for termination or present sufficient evidence to raise a triable issue concerning FMC's stated reasons were pretextual. In this regard, we note that plaintiff did not deny he was involved in an incident with a fellow employee that resulted in disciplinary action or that he turned tank valves that resulted in chemical spills. Indeed, he admitted turning valves--and being unqualified to do so. Nor did he deny making statements attributed to him during disciplinary meeting ,and he admitted--telling FMC supervisory personnel that he would not take direction from a fellow employee despite being told to do so. At most, --plaintiff's showing reflects his factual disagreement with FMC's investigation concerning the various incidents and his responsibility therefor. However, a dispute over whether the circumstances justified the disciplinary actions on its own investigation and conclusion concerning the incidents. In other words, the issue is not whether the alleged conduct constituted good cause for the disciplinary action but whether the alleged conduct was in fact the basis for the disciplinary action.

In addition, although FMC did not deny --- that plaintiff complained about his suspicion

of drug use and distribution, plaintiff presented no evidence showing a causal nexus between his complaints and his termination. the mere fact that after he complained, he was disciplined and later terminated is not sufficient to raise an inference that his complaints triggered the discipline or that the otherwise express reasons for such discipline and termination were pretextual. Rather plaintiff's claim of pretext is based on the theory that because he did not believe he ever did anything wrong while employed, the reason for his termination must have been his complaints about drug distribution. Such a theory, however , involves pure speculation and conjecture, which is insufficient to make pretext a triable issue. (Compare Burton v. Security Pacific Nat. Bank (1988) 197 Cal. App. 3d 972 [factual showing repretext insufficient to establish triable issue] and Crosier v. United Parcel Service, Inc. (1983 150 Cal. App. 3d 1132 [same] with Walker v. Blue Cross of California (1992) 4 Cal. App. 4th 985 [showing sufficient].)

Under the circumstances, therefore, we find that plaintiff failed to make a sufficient showing to avert summary judgment. Indeed, his showing do not even suggest that FMC's prima facie showing was untrue or pretextual.

II. Order denying Motion to Compel

In February 1994, while this case was in

federal court, plaintiff served a request -- for production of documents. On June 20 1994 three days the plaintiff's single cause of- action was remanded to superior court, the - federal district court partially granted -- plaintiff's motion to compel discovery. al- though the case had been remanded, FMC res- ponded in March 1994 and produced documents- responsive to all but three categories requ sted. As to those three, FMC objected. On -- August 1, 1994, plaintiff moved in superior- court to compel further discovery in respon- se to its request for production. On sept.- 25, 1994, after a hearing on the matter, the court denied plaintiff's motion as unclear-- and untimely and not in compliance with dis- covery statutes and rules of court regarding form and content.

Plaintiff contends he was "barred on his discovery," by which we understand him to -- contend that the trial court erred in denying his motion to compel discovery. We disagree.

The trial court is vested with wide dis- cretion in discovery matters, and its deter- mination will not be disturbed on appeal un- less plaintiff establishes as manifest abuse of discretion. (see Ryan v. Superior Ct. (19 60) 186 Cal. App. 2d 813, 817.)

Plaintiff's argument is unintelligible - and does not explain how the trial court abu sed its discretion. Nor could he. Since plai ntiff considered FMC's response to his requ

st for production inadequate, incomplete or too general, then under section 2031, subd. (1), he was required to file a motion to compel within 45 days. His motion was filed -- five months after FMC's response. It also -- failed to include a declaration indicating a reasonable and good faith effort at informal resolution. (§2031, Subd. (1).)

Under the circumstances, we find no --- abuse of discretion. Similarly, there was no abuse of discretion when the court denied - plaintiff's renewed motion to compel the same discovery.

III. Orders Vacating Default and Granting Motion to Quash.

On December 21, 1994, the superior Ct.- clerk, at plaintiff's request, entered defaults against defendants Ramos, Cederholm - and Lechuga. On February 8, 1995, counsel -- for FMC, appearing specially for these defendants, moved for relief from default and to- quash the service of summons. On March 7, -- 1995, the court granted the motions.

Plaintiff now contends that the trial Ct. erred in granting both motions. Plaintiff's argument concerning each of these motions is difficult to follow and filled with irrelevant information and legal assertions. He -- does not demostrate error or abuse of discretion, and the record before us reveals substantial factual and legal support for the -- trial Ct.'s orders.

App 17

A. Vacating Default

Section 473 provides, in relevant part--- "notwithstanding any other requirements of- this section, the court shall, whenever an - application for relief is made no more than six months after entry of judgment, is in - proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and -- which will result in entry of a default judgmente, or (2) resulting default judgment or- dismissal entered against his or her client- unless the court finds that the default or- dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise or neglect.". (Emphasis added.)

A ruling on a motion for relief from a - default judgment rests within the sound discretion of the trial court and will not be- disturbed on appeal absent a clear showing of abuse of discretion. (County of Alameda v. Risby (1994) 28 Cal. App. 4th 1425,)

Defendant's motion was filed within six months of entry of default judgment and was accompanied by a proper affidavit from FMC's attorney. In it, she explained that in Aug. 1994, Joseph Ford of FMC's internal legal -- department told her that copies of summonses and complaints in this action had been mailed to FMC. Counsel concluded that service of the

summonses and complaints by mail was ineffec-
tive and wroe plaintiff to inform him of her-
conclusion. She received no response. Later,-
in December 1994, before defaults were ente--
red, she attended a case management conferen
ce and informed the court that none of the in
dividual defendant's had been properly served
Plaintiff did not respond, and the court con-
tinued the conference on the ground that the
case was not at issue as to all defendants.-
Thereafter, however, the clerk entered the de
faults.

In his declaration, Joseph Ford stated --
that in August 1994, his department received
three copies of the same summons and complain
The copies were identical and purported to -
serve FMC Corporation only. Ford explained --
that he mistakenly believed the documents had
been mailed to FMC. He then referred the ma -
tter to outside counsel for FMC, telling her
that the documents had been received by mail.
However, he later learned that they had been-
received by a receptionist in the FMC buil --
ding lobby.

Clearly, the trial court believed the a--
ffidavits supporting the motion and that de
faults entered against the individual defen--
dants were entered in part because FMC's --
counsel mistakenly believed that service of-
the summonses and complaints against them --
had been ineffective. The record also reveal
that the defendants promptly moved for relief

from default and plaintiff would suffer no-- prejudice if relief were granted because his action against the individuals was identical to that against FMC.

Under the circumstances and given the policy that favors trial on the merits (see -- Brochtrup v INTEP (1987) 190 Cal. App. 3d -- 323, 329), the trial court was required to - grant relief. (§437c.)

B. Quashing Summons

The record reflects that the summonses- delivered to FMC were identical, i.e., copies of the same summons. Although Ramos, Cederholm, and Lechuga are listed on the top of-- the summonses, the summonses themselves do-- not expresely indicate or even suggest that any of these people are the persons being -- served, as required by section 412.30. Nor - do the summonses even appear directed to -- these individuals for purpose of service. -- Rather, the summonses all state that FMC -- Corp. is the person being served under Sec.- 416.10, which prescribes who may be served - on behalf of a corporation. Given the number of people listed on the summonses and their- failure to identify any of the individual -- people as the persons served, the summonses- were fatally defective, for they did not --- substantially comply with the statutory re-- quirements.

The record further reveals that defendant

had left FMC's employ approximately one year-
before the summonses were delivered to FMC &
did not maintain a bussines address at the--
FMC building and was not physically present--
therein. There is no evidence that Lechuga &
FMC continued to have a business relationship
oror that FMC qas authorized to accept servi
ce on Lechuga's behalf. Under this circumstan
ces, purported service on Lechuga via FMC was
improper and did not comply with section 415.2
SUBDIVISION (b), which permits service at a --
person's "dwelling hose, usual place of abode-
usual place of business, or usual mailing ---
address'...in the presence of a competent mem-
ber of the household or a person apparently -
in charge of his or her office, place of busi-
ness or usual mailing address....."

Disposition

The judgment is affirmed.

(TYPED)

wunderlich, J.

WE CONCUR:

Premo, Acting P.J.

Elia, J.

Flores v. Fmc Corporation
H013825.

(NO SIGNATURES ON DECISION).

App 21

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA. SIXTH APPELLATE DISTRICT.

Moctezuma Flores
plaintiff and Appellant,

vs.

FMC DORPORATION et. al.
defendants and Respondents.

Superior Court no. 737313

(FILED MAY 9 1996)

BY THE COURT*

The appellant's petition for rehearing is denied.

(SEALED)

MAY 9 1996

(SEALED)

/s/ PREMO, J. ACTING P.J.

* Before Premo, Acting p.j., Elia, J., and Wunderlich, J.

App 22

Sixth Appellate District No. H013825

S053843

IN THE SUPREME CT. OF CALIFORNIA.

MOCTEZUMA FLORES, Appellant

v.

FMC CORPORATION Et Al.,

Respondents

(SUPREME CT. FILED JULY 22 1996).

The time for granting or denying review in the above cause is hereby extended to - and including August 26, 1996, or the date-- upon which review is either granted or denied.

/s/ George

Chief Justice

App 23

Sixth Appellate District No. H013825
S053843

IN THE SUPREME COURT OF CALIFORNIA

MOCTEZUMA FLORES, Appellant

v.

F M C CORPORATION Et Al.,
Respondents

(SUPREME COURT FILED AUGUST 14 1996).

Petition for review DENIED.

(SEAL)

/s/ George
Chief Justice

App 24

FMC GROUND SYSTEMS DIVISION SAN JOSE.

(CORRECTIVE ACTION)

Date: 5/22/91

Dept. 8745: written warning.

(HANDWRITTEN)
Interfering with others in the performance of their job. Unwilling to share company fork-lift. (5-2191)

/s/----------
Carlos Ramos 5/21/91.

/s/_____5/21/91.
Arthur Balandra.

FALSE CORRECTIVE ACTION SUBMMITTED TO COURT BY CARLOS RAMOS.

(Such unintelligeble written that -- plaintiff is and was unable to follow).

App. 26.

INVESTIGATION OF THE UNION IN REGARD_ TO RAMOS ACCUSSATIONS TO PLAINTIFF OF __ HAVING INJURED AN EMPLOYEE WHO WAS HOSPITALIZED IN THE ACT.

June 28 1992.

(TYPED) Grivance #91-021

A meeting was held at 3:20 p.m. on June 27 1991 concerning your grivance No. 91-021.

Right after the Union Caucus, and on request of yours, Sister Theresa Miller conducted an investigation regarding a disagreement between you and Brother Dave Ruano. For that purpose, Sister Theresa separately interviewed the two eyewitnesses: Sister Maria E. Rodriguez and Sister Melaine Chung. and -- both ladies testified that:

"While Mr. Flores was driving a fork-lift, Mr. Dave Ruano took possession of Mr. Flores set of keys and ran outside laughing. That the more Mr. Flores requested his keys back, the louder Mr. Ruano laughted of him. Finally, Mr. Ruano threw the keys at Mr. Flores feetand-- even when Mr. Flores was walking away from - the scene, Mr. Ruano continued laughing -- very loud and with a very red-face.

Both ladies were asked if Mr. Flores had touched Mr. Ruano at any time and both said: NO!

/s/ John Decarli.

ACTION TAKEN BY A QUALIFIED JUDGE OF THE STATE OF CALIFORNIA AGAINST FMC's ACTS _ AND WHICH FMC OVERLOOKED AND IGNORED.

TYPED DETERMINATION.

CALIFORNIA UNEMPLOYMENT INS. BOAR.

Case # SJ-00674

STATEMENT OF FACTS

In May 1992, claimant was assigned to work area that he had not been previously - assigned to and in which he had no experien The claimant testified that: "he was unable to perform his work because the air imput-- into the tank was too highand if he had --- attempted to do plating the the solution -- would have splashed in the face and caused-- him injury. He turned a vqlve slightly to -- try to reduce the flow of air but when it -- was apparent that the valve was the wrong one (claimant had not been instructed with regard to these valves) he returned the valve to its original position. The employer maintained -- that the claimant had caused a 3200 gallons-- spill and issued the claimant a final warning.

On June 1 , claimant was again assigned- to an area in which he had no prior experien ce.

REASON FOR DECISION

(Misconduct)

"misconduct connected with the work" as a substantial breach by the claimant of an important duty or obligation owed the -- employer, willful or wanton in character, and tending to injure the employer.

On the other hand, mere ineffiiency, incapacity, isolated instance, inadverten ceor good faith errors in judgment or dis cretion are not misconduct.

In this case there is no evidence of -- any wilful or intentional disregard of the employer's interest on the part of the cli- mant. While employer may have some justi- fication for its decision to terminate the claiment, the evidence falls short of esta blishing misconduct.

DECISION

The departament determination is re-- versed.

/s/BRUCE N. BERWALD

Administrative Law Judge.

App. 29.

DOCUMENT RELEASED BY GERALD CIDERHOLMS WHEN ASKED BY SUPERVISOR DAVID LEE TO __ LOWER CORRECTIVE ACTION OF "FINAL WARNING FOR BEING SO UNJUSTIFIED.

Date of spill 5-8-92. Time: 6p.m.

CAUSE OF SPILL AND CORRECTIVE ACTION TAKEN .

(handwritted)

Swing shift operator went to tank 15-- to turn on air. By mistake he turned on the water. He walked away from tank.

STATE NAME OF EMPLOYEE INVOLVED AND EXPLAINE HOW

(handwritted)

Montazuma Flores.

WHAT ACTION HAS BEEN?WILL BE TAKEN TO PREVENT A RECOURRENCE OF THIS TYPE OF SPILL-- (i.e. procedual changes, training, disciplinary action, equipment upgrade(s) etc. be specific) ?

(handwritted)

Held meeting with both shifts.

App 30.

Discip;inary actionFinal warning).

When will the corrective action(s) be completed.

(handwritted)

Upon Flores return to work.

Name of production supervisor (print)

G. W. Cederholm

Signature of production Supervisor.

/s/ Ga Ciderholm.

App 31

ORDER GIVEN TO FMC AT THE DISTRICT Ct. BY JUDGE INFANTE AND DISOBEYED BY FMC.

United States District Ct. for the Northern District of Calif.

Moctezuma Flores. plaintiff

v.

FMC Corp. defendant

(sealed) FILED: June 20 1994

(Order granting in part).

Plaintiff Moctezuma Flores' Motion to-- Compel Production of documents was heared -- on June 20, 1994. Plaintiff appeared in pro-- pia persona. Christopher Martin, Esq of --- Dunn & Crutcher appeared on behalf of defen- dant FMC Corp. Having reviewed the moving & opposition papers, considered the comments-- of Messrs. Flores and Martin, and good cause appeareing, plaintiff's motion is granted in part, as follows.

IT IS HEREBY ORDERED THAT:

On or before July 1, 1994, FMC shall -- produce documents responsive to plaintiff's Request for Production Nos. 1, 2, 3, 4, 6, 7, 8, 9, and 10.

a. In response to Request for Production No. 4, FMC shall produce personnel and employee manuals that were in effect at the time of plaintiff's discharge.

b. In response to Request for Production No. 10. FMC shall produce its organizational charts that were in effect in 1992 and that pertain to plaintiff's employment at FMC's San Jose Grund Systems Facility.

2. Plaintiff's motion is denied with respect to Request for Production Nos. 5, 11 and 12.

IT IS FURTHER ORDER:

3. On or before July 1 1994, Plaintiff shall disclose to FMC the names addresses and telephone numbers, to the extent known, of all persons having knowledge of his claim.

4. FMC shall comply fully with General Order 34, paragraph 7.

5. The parties are relieved from complying with all other provisions of General Order 34.

IT IS SO ORDERED.

DATED: June 20, 1994.

/s/ Edward A. Infante

(typed) Edward A. Infante

U.s.Magistrate Judge

SUMMONS SERVED ON THE THREE INDIVIDUAL DEFENDANTS.

Notice to defendant. (Aviso al acusado)

FOOD MACHINERY CORP. JERRY CIDERHOLM, CARLOS RAMOS, _ GUADALUPE LECHUGA AND DOES 1-30 INCLUSIVE.

YOU ARE BEING SUED BY PLAINTIFF:
(A usted lo esta demandando).

Flores, Moctezuma.

You have 30 CALENDAR DAYS after this sum-- mons is served on you to file a typewritten response of this court.

A letter or phone call will not protect -- you; your typewritten response must be in - proper legal term if you want the court to- hear you case.

If you do not file your response on time, - you may lose the case, and your wages, money and property may be taken without further -- warning from the court.

There are other legal requirements. You may- want to call an attorney right away. If you do not know any attorney, you may call an attorney referal service or a legal aid office (listed on the phone book).

The name and address of the court(s)

SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY.
191 No. First Street.
San Jose, Calif. 95113.

Name and address of plaintiff:
Moctezuma Flores
984 Prevost St.
San Jose, Ca. 95125.

(sealed)
Grace Kiyamara.

Clerk by: /s/ Smith.

Date: Dec 30 1993

seal

big seal on the left bottom side.

App 35

DECLARATION OF REASONABLE DILIGENCE

I the undersigned are and was on the dates -- herein mentioned, over the age of eighteen-- years and not a party of the action, and I declare that before using substited service -- under C.C. P? 415.20(a) , 41520(b), I dili-- gently attempted to personally serve the defendant. CARLOS RAMOS

2830 and 1020 De la Cruz Blvd. Santa Clara,-- Ca. as follows:
11-294; 11-3-94 and 11-3-94
Time: 1:58pm; 1:58pm and 2:08pm.
1020 De la Cruz is not appropriate for service. Relocated party to 2830 De la Cruz, Sta. Clara, Ca. Substituted service on a natural-- person per CCP 415.20b, per company policy, - personal service is not allowed. Company will only allow service under CCP 415.20b and defendants home address is unknown or is no longer current.
Person servins: Ron Gardiner (typed)
Registered California Process server.

Date: 2-13-95.

/s/ Ron Gardiner

PROOF OF SERVICE RENDERED TO THE THREE INDIVIDUAL DEFENDANTS.

Proof of Service

1. At the time of service I was at least-- 18 years of age and not a party to this ac-- tion, and I served copies of the: SUMMONS AND COMPLAINT" NOTICE OF THE CASE -- MANAGEMENT CONFERENCE, LOCAL RULES 6,7,8. - NOTICE TO LITIGANTS: BLANK CASE MANAGEMENT - CONFERENCE QUESTIONAIRE AND AT-ISSUE MEMORAN DUM; BLANKSTIPULATION AND ORDER RE CIVIL -- SHORT CAUSE MATTER:

2. Party served CARLOS RAMOS

Person Sereved: YOLANDA CLARKE
AUTHORIZED AGENT
2830 DE LA CRUZ FMC
Santa Clara, Ca.

(Business)

3. I Served the party named in item 3

b. By leaving the copies with or in the pre sence of (1) (business) a person at least 18 years of age apparently in charge at -- the office or usual place of business of-- the person sereved. I informed him or her- of the general nature of the papers.

(3) On 08/17/94; (4) at 01:45pm; (5) A declaration of diligence is attached;

c. by mailing the copies to the person ser-- ved, addressed as shown in 2c, by first class mail, postage prepaid. (1) on: 08/22/94. (2) from San Jose, Ca.

App 37

DECLARATION OF REASONABLE DILIGENCE

I the undersigned are and was on the dates -- herein mentioned, over the age of eighteen-- years and not a party of the action, and I de clare that before using substited service -- under C.C. P? 415.20(a) , 41520(b), I dili-- gently attempted to personally serve the de- fendant. GERALD CEDERHOLM

2830 and 1020 De la Cruz Blvd. Santa Clara,-- Ca. as follows:
11-294; 11-3-94 and 11-3-94
Time: 1:58pm; 1:58pm and 2:08pm.
1020 De la Cruz is not appropriate for servi ce. Relocated party to 2830 De la Cruz, Sta. Clara, Ca. Substituted service on a natural-- person per CCP 415.20b, per company policy, - personal service is not allowed. Company will only allow service under CCP 415.20b and de- fendants home address is unknown or is no lon ger current.
Person servins: Ron Gardiner (typed)
Registered California Process server.

Date: 2-13-95.

/s/ Ron Gardiner

PROOF OF SERVICE RENDERED TO THE THREE INDIVIDUAL DEFENDANTS.

Proof of Service

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2. Party served GERALD CEDERHOLM

Person Sereved: YOLANDA CLARKE
AUTHORIZED AGENT
2830 DE LA CRUZ FMC
Santa Clara, Ca.

(Business)

3. I Served the party named in item 3

b. By leaving the copies with or in the pre sence of (1) (business) a person at least 18 years of age apparently in charge at -- the office or usual place of business of-- the person sereved. I informed him or her- of the general nature of the papers.

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App 3 9

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Time: 1:58pm; 1:58pm and 2:08pm.
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Person servins: Ron Gardiner (typed)
Registered California Process server.

Date: 2-13-95.

/s/ Ron Gardiner

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Proof of Service

1. At the time of service I was at least-- 18 years of age and not a party to this ac-- tion, and I served copies of the: SUMMONS AND COMPLAINT" NOTICE OF THE CASE -- MANAGEMENT CONFERENCE, LOCAL RULES 6,7,8. - NOTICE TO LITIGANTS: BLANK CASE MANAGEMENT - CONFERENCE QUESTIONAIRE AND AT-ISSUE MEMORAN DUM; BLANKSTIPULATION AND ORDER RE CIVIL -- SHORT CAUSE MATTER:

2. Party served GUADALUPE LECHUGA

Person Sereved: YOLANDA CLARKE
AUTHORIZED AGENT
2830 DE LA CRUZ FMC
Santa Clara, Ca.

(Business)

3. I Served the party named in item 3

b. By leaving the copies with or in the pre sence of (1) (business) a person at least 18 years of age apparently in charge at -- the office or usual place of business of-- the person sereved. I informed him or her- of the general nature of the papers.

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c. by mailing the copies to the person ser-- ved, addressed as shown in 2c, by first class mail, postage prepaid. (1) on: 08/22/94. (2) from San Jose, Ca.

App 41

NOTICE OF CASE MANAGEMENT CONFERENCE -- SENT TO THE THREE INDIVIDUAL DEFENDANTS

RE" FLORES vs FOOD MACHINERY CORP.

NOTICE OF CASE MANAGEMENT CONFERENCE

A Case Management Conference has been scheduled for the above entitled Case and all - parties are directed to appear in this Ct.- on: Date: 10/18/94 at 10:00 AM in Dept.17

At: Superior Court, 191 No. First St. S.J.

1. You must file and serve a completed "-- "Case Management Conference Questionaire-- and at Issue Memorandum at least 10 calendar days prior to the above scheduled conf.
2. Counsel for each party and each self-represented party shall attend the conference and be fully prepared to participate effectively.
3. Compliance with all Local Rules of Court is required.

For further information, contact the Calendar office, (408) 299-2618.

(see attached for additional parties)

Parties and/or Attorneys of Record:

Gibson Dunn and Crutcher- Menlo Park

Moctezuma Flores.

At: San Jose, Calif. on 07?28?94.

(typed) Stephen V. Love, Clerk by Karen S. Sanguinetti, Deputy.

ANGRY-LETTER SENT TO PLAINTIFF BY ATTRNYS.

FOR SERVICE MADE TO INDIVIDUAL DEFENDANTS

Gibson, Dunn and Crutcher (Lawyers)
3000 Sand Hill Rd. Bldg. 1 suite 285
Menlo Park, Calif. 94025.
(408) 926-7300

August 24, 1994

Mr. Moctezuma Flores.
San Jose, Calif. 95125.

RE: Flores v. FMC Corporation

Dear Mr. Flores:

We recently received a copy of a set of papers you mailed to FMC's post office box-- addressed to Carlos Ramos. Apparently you are attempting to serve Mr. Ramos with a Summons and Complaint in this action.

Please be advised that your attempted -- service on Mr. Ramos is not in compliance -- with the California Code of Civil Procedure, and we do not consider service to have been- affected, nor have we been authorized to -- accept service on Mr. Ramos behalf. As we -- have previously notified you, neither of the other two individually-named defendants has - been properly served, and FMC Corp. is there fore the only defendant that has been served and has appeared in the action.

Very truly yours,

/s/ Susan B. Burr.

(typed) Susan B. Burr.

App. 43

DEFENDANT JERRY CIDERHOLMS RESPONDING AS PARTY OF THE ACTION

U. S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Moctezuma Flores. plaintiff

v.

FOOD MACHINERY CORP.

No. 94-20073 RMW.

DEFENDANT JERRY CEDERHOLMS WRITTEN RESPONSE TO PLAINTIFF's FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Propounding Party: Plaintiff Mr. Flores.
Responding Party: Defendant Jerry Cederholm
Set Number ONE 91)
TO PLAINTIFF MOCTEZUMA FLORES:

GENERAL OBJECTIONS TO ALL REQUESTS

A. Defendant objects to the Rrequest for Production of Documents, on the ground that the identical requests have been propounded-- to defendant FMC Corp., and are therefore -- duplicative and extremely burdensome in that any documents in the possession, custody or-- control of the individual defendant would be

in the possession, custody or control of -- the corporate defendant and would be inclu-- ded in the response of FMC to the request - for production to the extent not otherwise-- objectionable. Defendant Cederholm therefore will not separately respond to the requests propounded herein, and hereby states the --- objection on this ground, which is in addi tion to the objections stated in the response of defendant FMC to the same request.

SPECIFIC OBJECTIONS AND RESPONSES

RESPONSE TO REQUEST Nos. 1-12:

See General Objection A above.

DATED" March 23, 1994

GIBSON, DUNN AND CRUTCHER"
(typed)

/s/ Susan B. Burr

Attorneys for Defendant FMC Corporation.

App 45

GRIVANCE FILED AGAINST SUPERVISOR FOR NOT CALLING THE EMERGENCY RES PONDING TEAM DURING FIRST SPILL.

NAME: Moctezuma Flores.

Agreement Reference section.
Section 2(A)(C)(D). Section 17.
(Unjust write-up)

(handwritted)

Mr. Flores was wrote up a final warning for an accident in plant 6 area on 5-8-92. This spill was an acid and water spill. He never was trained on the phosphate tank and was put to work there unsupervised. When Mr. Flores went to work at the phosphate tank -- the air pressure was too high so he tried to lower the air pressure, on this tank there - is a air adjustment and a water adjustment - valve with no markings defining the source - or on and off direction. So, Mr. Flores did not know which was air and which was water- he moved one valve and found it was the wrong valvebecause the air pressure did not change so Mr. Flores put that valve back to the position it was in. Then he moved the other valve which was the correct one and he lowered the air pressure and there was no one around to ask for help , about 10 minutes later another

employee informed Mr. Flores about the spill and this was not all his fault because he-- had no training on these tanks are not --- marked with the source and on or off positions. After the spill ERT (Emergency Responding Team) was not called which is the proper procedure for safety purposses. Mr. Flores is taking all the blame for this acci -- dent when the company would have done things to prevent this from happening.

Relief requested.

1. Mr. Flores warning pull.
2. Offer training to employees before assigning them to work in unfamiliar jobs.
3. Mark valves with air, water, source and make water visible coming out of pipe to prevent this from happening again.
4. When a spill occurs follow proper safety procedures and call 5555 and report it- to the ERT team and security.

Dated: 5-29-92.

/s/ David Escobedo /s/ Moctezuma Florés.

/s/ David Lee. 5-29-92.

Moctezuma Flores
plaintiff
v
FMC Corp. Jerry Ciderholm, Carlos Ramos, Guadalupe Lechuga and DOES 1-30 INCLUSIVE
defendants.

Declaration of Carlos Ramos

UNDISPUTED FACTS

1. In July 1982, after he had been employed at FMC for only 10 months, Flores was suspended for two weekd for insubordination, the third major-incident Flores had been involved in during the - brief period of his employment.

Delaration of Carlos Ramos.

2. In May 1991, plaintiff was involved in an altercation with another employee over a forklift, resulting in a written warning for - Flores and a suspension for

Ramos Decl.

the other employee for violation of a safety-rule.

3. In a disciplinary meeting after receiving the written warning, Flores threatened Ramos saying I am going to get you and threatened to Kick & punch another employee — Ramos Declaration

4. Flores was sent home following the incident of-threatening to kick and to punch an employee, and when he returned to work on May 28, 1991, Flores was given a three day suspension without pay because of the threat. — Ramos Decl. Ramos Decl.

5. On May 8 1992, Gerald Cederholm, General Supervisor met with plaintiff, his union shop steward, supervisors Tom Silva, David Lee and Dee Fox-and Senior CAD Plater Pete DE Lara concerning an incident that had occurred the previous day on plaintiff's shift. — Declaration of. Gerald Cederholm

6. According to those present at the meeting, Silva and Lee were called to investigate a-- problem plaintiff was having with loud popping on the automatic CAD plate line, and Delara stated that the popping was - caused by Flores having loaded-the parts incorrectly. — Cederholm declaration

7. A shouting match had -- erupted when Lee, plaintiff -- supervisor, told him to make - — Cederholm declaration

sure he loaded the parts the way Delara had instructed and plaintiff, who was subordinate to Delara, -- disagreed with Delara and became very upset. Cederholm Declaration

8. Plaintiff insisted that there was something in the tank that was causing the -- popping reaction, but when his supervisors checked, they had found nothing in the tank rather, as Delara had stated, plaintiff had loaded the parts improperly. Cederholm Declaration

9. After the information was recounted in the meeting with Cederholm, Flores angrily declared that he would not take any direction from Delara and walked out of the meeting. Cederholm Declaration

10. On May 8, 1992, Flores -- caused a chemical spill to occur from a tank holding caustic chemicals in his work area, by turning on a water valve to the tank and inexplicably leaving the tank unattended, resulting in an overflow of Approx. 3000 gallons of acid solution. Ramos Declaration

11. FMC's emergency team was called to contain and clean up the spill, for an estimated 50 to 60 man hours of clean up at a cost of over $3,000. Ramos Declaration

12. FMC had to file a report with the Hazardous Material Division of the San Jose Fire Department -- Ramos Decl.

describing the spill and the clean up measures taken.

13. FMC rules require that only employees who have had training in compliance are allowed to -- handcle the valves on the- chemical tanks. Ramos Declaration

14. Flores admitted that he had never had any training in compliance. Ramos Declaration

15. Flores adamantly refused to accept any responsability for the chemical spill. Ramos Declaration

16. Flores was issued a final warning on May 20, 1992 for causing the chemical - spill on May 8. Ramos Declaration

17. On June 1, 1992, less than a month after the firs chemical spill and only 10- days after having been explicity told not to touch the- valve on the chemical tank, Flores again turned on the - water valve on a tank containing chemical solution left it unattended, and caused a second chemical spill of 1,600 gallons of acid. Ramos and Cederholm Declaration.

18. Flores failed to report the second spill, and 50 to 70 man hours were required to -- pump out and clean up the spill. Ramos Declaration

19. Inmediately after the spill

Geral Cederholm, the General supervisor for Flores' dept. asked Ramos to investigate the spill as he was very concerned about the extend of the spill and felt discipinary action was called for. — Ramos and Cederholm declarations

20. Ramos met with Flores & David Escobedo, Flores' union steward, during the week of June 10. — Ramos Declaration.

21. During the meeting Flores stated that he could not find the compliance person, and had made no attempt to contact David Lee, his supervisor, Tom Silva another supervisor, or Pete DeSara, lead person. — Ramos Declaration.

22. After Flores finished describing the circumstances of the spill from his perspective, he was suspended pending completion of the investigation. — Ramos Declaration.

23. During the week of June 10 1992, Ramos learned of a letter Flores had written to Brenda Giamanco, regarding Flores suspicions of drug distribuition in his work area. — Ramos Decl.

24. Although the letter lacked any concrete basis for Flores suspicions, the decision was made to investigate the allegations of drug distribution prior to meeting with Flores regarding the spill so that the issue could be resolved separately from any disci — Ramos Declaration

plinary action ultimately - taken in connection with the chemical spill incident.

25. Ramos Conducted a throough investigation of Flores' allegations of drug distribuition and spoke with each of the -- employees mentioned in Flores' letter. Ramos Declaration

26. After investigation, Ramos concluded that there was - no basis in fact for plaintiff's suspicions of drug use in his-- work area. Ramos Declaration

27. Flores admitted at the arbitration heaing of his discharge grievance that he had no evidence that any drug use or drug -- dealing took place, and that he- based his letter on nothing more than suspicious. Ramos and Burr Declaration.

28. There was no further action taken with respect to Flores' letter nor did it in any way enter- into the decision regarding Flores disciplinary action for causing the chemical spill. Ramos Decl

29. FMC does not retaliate against employees who bring complaints of drug distribution to the attention of their superiors, and in - fact affirmatively encourages such conduct and maintains an "ethic-- hotline" for employees to use in-- voicing their concern. Ramos & Burr Decl.

30. On July 15, 1992, a disciplinary action meeting was held to --

review the results of the investigation regarding the June 1 spill and to implement appropriate disciplinary action. Ramos declaration

31. In the July 15 meeting, the Co. discussed its findings regarding the chemical spill -- that Flores had deliberately -- turned on the water valve on -- when he knew he was not supposed to touch the valves on the tank and then left the work area long enough to allow 1,600 gallons of toxic chemical solution to spill from the tank, as well as its -- findings that, prior to turning the water valve, Flores had had the opportunity but failed to -- contact several people for assistance. Ramos Declaration

32. In the July 15 disciplinary action meeting, Flores admitted that he never had any intention of contacting his supervisor David Lee, and stated "the guy never did me much good... I didn's think of him and even if I had, I wouldn's have called him. Ramos Decl.

33. Based on the results of the investigation, together with Flores' overall record, the Co. decided that immediate discharge for willful violation of Company safety rules and of a direct order was the appropriate disciplinary action. Ramos Decl.

34. Ramos notified Flores by letter dated July 15, 1992 of the Company's decision to terminate his employment and the reason for that action. Ramos Decl.

35. FMC followed its employee conduct rules consistently in determining the appropriate discipline to impose for Flors conduct. Ramos Declaration

36. Flores filed a grivance concerning the disbharge decision in accordance with the grivance procedures set forth in the collective barganining agreement (the "CBA") in effect between the Union and FMC. Ramos Decl.

37. A meeting was held on July 21, 1992 to discuss the final warnings issued to Flores after the first spill and his termination as result of the second spill. Ramos Decl.

38. In the July 21 meeting, Flores admitted that he knew turning the air and water valves on the tank was not part of his job. Ramos Decl.

39. In the July 21, 1992, grivance meeting Flores made the new claim with respect to the May 8 spill that the first shift, not he, had caused the spill. Ramos Decl.

40. The Company investigated and confirmed that Flores' charge was insupportable, since, the logs that record conditions in the containment areas at the end of every shift showed that the spill could not have been caused by the first shift, since the containment area was empty. Ramos Decl.

41. Also in the July 21 grievance meeting Flores claimed for the first time regarding the June 1 spill that David Lee and Dee Fox , the shift supervisor had ordered him to put water in the tanks. Ramos Decl.

42. Lee and Fox both denied ever ordening Flores to put - water in any tank, and Lee sta- ted that he had in fact speci- fically told Flores after the- first spill never to touch the valves. Ramos Decl.

43. In the July 21 grivance- meeting, Flores' union business representative asked him why - he did not wait for the complian- ce person to return instead of turning the water valve himself, and Flores had no answer. Ramos Decl.

44. The July 21 grievance meet ing ended with an angry outburst by Flores, who pounded on the -- table, and made an offensive -- remark to Ramos. Ramos Decl.

45. The Co. denied Flores' -- grievance, and the Union requested that Flores grievance be submmited to arbitration under the terms - of the CBA. Ramos Decl.

46. The arbitration hearing con- cerning plaintiff's grievance -- took place on February 2 1993, be fore American Arbitration Assoc. Arbitrator Alexander Cohn. Ramos Decl.

47. Testifying at the arbitra-- tion on behalf of FMC were Carlos Ramos, Richard Hasper, Tom Silva, Gerald Cederholm, and Delores (Dee) Foxtestifying on behalf of Flores were Flores and his union Steward, David Escobedo. Ramos Decl.

48. After a full day's testimony, which included evidence of Flores' letter to Brenda-Giamanco regarding his suspicion of drug distribution, Arbitrator Cohn issued a written decision concluding that FMC had discharged Flores for just cause.

Ramos Decl.

49. Plaintiff's lawsuit was filed on December 30, 1993.

Complaint on file in this action

DATED: November 8, 1994.

(typed)
GIBSON, DUNN & CRUTCHER
CHRISTOPHER J MARTIN
SUSAN B. BURR

/s/ By Susan B. Burr

(typed) SUSAN B. BURR

SUPERIOR COURT OF THE STATE OF
CALIFORNIA COUNTY OF ST . CLARA

Moctezuma Flores

v. plaintiff

FOOD MACHINERY CORP. Jerry Cederholm, -- Carlos Ramos, Guadalupe Lechuga and DOES 1-30 inclusive.

defendants

CV 737313

NOTICE OF MOTION AND MOTION TO QUASH SERVICE OF SUMMONS AND FOR RELIEF FROM AND TO SET ASIDE DEFAULT.

(Filed Feb. 8 1995)

TO PLAINTIFF MOCTEZUMA FLORES ACTING IN PROPRIA PERSONA:

PLEASE TAKE NOTICE that on February 23 1995, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 17 of the Santa Clara County Superior Court, located at 191 North First Street, San Jose California, defendants Carlos Ramos, Gerald Cederholm and Guadalupe Lechuga (defendants") specially appearing, will move this Court --

for an order quashing service of summons as to each of said defendants, and granting -- relief from and setting aside the default -- enterec against each of these individual -- defendants on or about December 21, 1994. -- This motion will be made pursuant to California Civil Procedure Code §§418.10 and 437 on the grounds that the defaults entered against these defendants are void, or, in the alternative, that defendants are entitled to relief from such defaults on the grounds that they were entered through mistake, inadvertence, or neglect as set forth in the accompanying papers filed herewith.

This motion is based on the Notice of-Motion and Motion, the Memorandum of Points and Authorities in Support of the Motion, -- the Declarations of Susan B. Burr and Joseph J. Ford, the Request to Take Judicial Notice of certain papers on file herein, upon other pleadings and papers on file herein, and upon such other and further written and oral argumets as shall be presented at or before the - time of the hearing.

DATED: FEBRUARY , 1995.

/s/ Susan B. Burr.
(typed) Susan B. Burr
Attorneys for defendant

IN THE SUPERIOR COURT OF STS. CLARA

FOR THE NORTHERN DIST. OF CALIFORNIA

Moctezuma Flores
plaintiff

v

FMC Corp. Jerry Ciderholm, Carlos Ramos, Guadalupe Lechuga and DOES 1-30 INCLUSIVE
defendants.

RESPONSE TO DEFENDANT"s UNDISPUTABLE MATTERIAL OF FACTS.

SEALES: (Filed Feb. 9 1995).

UNDISPUTED FACTS	PLAINTIFF's RESPONSE
1. In July 1982, after he had been employed at FMC for only 10 months, Flores was suspended for two weekd for insubordination, the third major-incident Flores had been involved in during the - brief period of his employment.	Incorrect statement
2. In May 1991, plaintiff was involved in an altercation with another employee over a forklift, resulting in a written warning for - Flores and a suspension for	Incorrect statement

the other employee for violation of a safety-rule.

3. In a disciplinary meeting after receiving the written warning, Flo statemtn- res threatened Ramos say ing I am going to get you and threatened to Rick & punch another employee — Incorrect

4. Flores was sent home- following the incident of- threatening to kick and to punch an employee, and when he returned to work on May 28, 1991, Flores was given a three day suspension with out pay because of the threat. — incorrect statement

5. On May 8 1992, Gerald Cederholm, General Supervisor met with plaintiff, his union shop steward, supervisors Tom Silva, David Lee and Dee Fox- and Senior CAD Plater Pete DE Lara concerning an incident that had occurred the previous day on plaintiff's shift. — Incorrect Statement

6. According to those present at the meeting, Silva and Lee were called to investigate a-- problem plaintiff was having with loud popping on the auto matic CAD plate line, and Delara stated that the popping was - caused by Flores having loaded- the parts incorrectly. — Incorrect statement

7. A shouting match had -- erupted when Lee, plaintiff -- supervisor, told him to make - — Incorrect statement

sure he loaded the parts the way Delara had instruc ted and plaintiff, who was subordinate to Delara, -- disagreed with Delara and became very upset. Incorrect Statement

8. Plaintiff insisted that there was something in the - tank that was causing the -- popping reaction, but when - his supervisors checked, they had found nothing in the tank rather, as Delara had stated, plaintiff had loaded the parts improperly. Incorrect Statement

9. After the information was recounted in the meeting with- Cederholm, Flores angrily decla red that he would not take any- direction from Delara and walked out of the meeting. Incorrect statement

10. On May 8, 1992, Flores -- caused a chemical spill to occur from a tank holding caustic che micals in his work area, by tur ning on a water valve to the tank and inexplicably leaving the tank unattended, resulting in an over- flow of Approx. 3000 gallons of - acid solution. Incorrect statement

11. FMC's emergency team was - called to contain and clean up the spill, for an estimated 50 to 60 man hours of clean up at a cost - of over $3,000. Incorrect statement

12. FMC had to file a report with the Hazardous Material Division of the San Jose Fire Department -- Incorrect statement

describing the spill and the clean up measures taken.

13. FMC rules require that only employees who have had training in compliance are allowed to -- handle the valves on the chemical tanks. Incorrect statement

14. Flores admitted that he had never had any training in compliance. Incorrect statement

15. Flores adamantly refused to accept any responsability for the chemical spill. Incorrect statement

16. Flores was issued a final warning on May 20, 1992 for causing the chemical spill on May 8. Incorrect statement

17. On June 1, 1992, less than a month after the firs chemical spill and only 10 days after having been explicity told not to touch the valve on the chemical tank, Flores again turned on the water valve on a tank containing chemical solution left it unattended, and caused a second chemical spill of 1,600 gallons of acid. Incorrect statement

18. Flores failed to report the second spill, and 50 to 70 man hours were required to -- pump out and clean up the spill. Incorrect statement

19. Inmediately after the spill

Geral Cederholm, the General supervisor for Flores' dept. asked Ramos to investigate - the spill as he was very con cerned about the extend of- the spill and felt discipinary action was called for. Incorrect statement

20. Ramos met with Flores & David Escobedo, Flores' union steward, during the week of - June 10. Incorrect statement

21. During the meeting Flores stated that he could not find the compliance person, and had made no attempt to contact David Lee, his supervisor, Tom Silva- another supervisor, or Pete De- Sara, lead person. Incorrect statement

22. After Flores finished des cribing the circumstances of - the spill from his perspective, he was suspended pending comple tion of the investigation. Incorrect Statement

23. During the week of June - 10 1992, Ramos learned of a -- letter Flores had written to - Brenda Giamanco, regarding Flores suspicions of drug distribuition in his work area. Incorrect statement

24. Although the letter lacked any concrete basis for Flores -- suspicions, the decision was made to investigate the allegations - of drug distribution prior to -- meeting with Flores regarding the spill so that the issue could be resolved separately from any disci Incorrect statement

plinary action ultimately - taken in connection with the chemical spill incident.

25. Ramos Conducted a throough investigation of Flores' allegations of drug distribuition and spoke with each of the -- employees mentioned in Flores' letter. Incorrect statement

26. After investigation, Ramos concluded that there was - no basis in fact for plaintiff's suspicions of drug use in his-- work area. Incorrect statement

27. Flores admitted at the arbitration heaing of his discharge grievance that he had no evidence that any drug use or drug -- dealing took place, and that he- based his letter on nothing more than suspicious. Incorrect statement

28. There was no further action taken with respect to Flores' letter nor did it in any way enter- into the decision regarding Flores disciplinary action for causing the chemical spill. Incorrect statement

29. FMC does not retaliate against employees who bring complaints of drug distribution to the attention of their superiors, and in - fact affirmatively encourages such conduct and maintains an "ethic-- hotline" for employees to use in-- voicing their concern. Incorrect statement

30. On July 15, 1992, a disciplinary action meeting was held to -- Incorr. Statmt.

review the results of the ins
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31. In the July 15 meeting, -
the Co. discussed its findings- Incorrect
regarding the chemical spill -- statement
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when he knew he was not supposed
to touch the valves on the tank
and then left the work area long
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toxic chemical solution to spill
from the tank, as well as its --
findings that, prior to turning-
the water valve, Flores had had-
the opportunity but failed to --
contact several people for assis
tance.

32. In the July 15 disciplina-
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tion of contacting his supervi-
sor David Lee, and stated "the -
guy never did me much good... I
didn's think of him and even if
I had, I wouldn's have called him.

33. Based on the results of -
the investigation, together with
Flores' overall record, the Co.- Incorrect
decided that immediate discharge statement
for willful violation of Company
safety rules and of a direct order
was the appropriate disciplinary
action.

34. Ramos notified Flores by le
tter dated July 15, 1992 of the-- Incorrect
Company's decision to terminate his statement
employment and the reason for that
action.

35. FMC followed its employee conduct rules consistently in determining the appropriate discipline to impose for Flors conduct. Incorrect statement

36. Flores filed a grivance concerning the discharge decision in accordance with the grivance procedures set forth in the collective barganining agreement (the "CBA") in effect between the Union and FMC. Incorr. Statemt.

37. A meeting was held on July 21, 1992 to discuss the final warnings issued to Flores after the first spill and his termination as result of the second spill. Incorrect statement

38. In the July 21 meeting, Flores admitted that he knew turning the air and water valves on the tank was not part of his job. Incorrect statement

39. In the July 21, 1992, grivance meeting Flores made the new -- claim with respect to the May 8 spill that the first shift, not he, had caused the spill. Incorrect statement

40. The Company investigated and confirmed that Flores' charge was insupportable, since, the logs that record conditions in the containment areas at the end of every shift showed that the spill could not have been caused by the first shift, since the containment area was empty. Incorrt. Statmt.

41. Also in the July 21 grievance meeting Flores claimed for the first time regarding the June 1 spill that David Lee and Dee Fox , the shift supervisor had ordered him to put water in the tanks. Incorr. Stamt.

42. Lee and Fox both denied ever ordening Flores to put - water in any tank, and Lee sta ted that he had in fact speci- fically told Flores after the- first spill never to touch the valves. Incorrect statement

43. In the July 21 grivance- meeting, Flores' union business representative asked him why - he did not wait for the complian ce person to return instead of turning the water valve himself, and Flores had no answer. Incorrect statemet

44. The July 21 grievance meet ing ended with an angry outburst by Flores, who pounded on the -- table, and made an offensive -- remark to Ramos. Incorrect statement

45. The Co. denied Flores' -- grievance, and the Union requested that Flores grievance be submmited to arbitration under the terms of the CBA. Incorrt. statmt.

46. The arbitration hearing con- cerning plaintiff's grievance -- took place on February 2 1993, be fore American Arbitration Assoc. Arbitrator Alexander Cohn. Speculative

47. Testifying at the arbitra-- tion on behalf of FMC were Carlos Ramos, Richard Hasper, Tom Silva, Gerald Cederholm, and Delores (Dee) Foxtestifying on behalf of Flores were Flores and his union Steward, David Escobedo. Specula tive

48. After a full day's testimony, which included evidence of Flores' letter to Brenda-Giamanco regarding his suspicion of drug distribution, Arbitrator Cohn issued a written decision concluding that FMC had discharged Flores for just cause. Speculative

49. Plaintiff's lawsuit was filed on December 30, 1993. True.

DATED:

/s/ Susan B. Burr

IN THE SUPERIOR COURT OF THE STATE

FOR THE NORTHERN DISTRICT OF CALIF.

Moctezuma Flores

v.

FMC. Corp.

ADDITIONAL SEPARATE STATEMENT OF MATERIAL FACTS NOT IN DISPUTE.

(sealed) Filed: Feb. 9 1995.

Pursuant to Code of Civil Proc. ---- §437c, plaintiff, Moctezuma Flores submmits the following "Undisputable matterial of - facts.

UNDISPUTABLE FACTS	EVIDENCE
1. Defendant's Counsel do not wholly disposes- of the within action -- [Code of Civ. Proc. -- §437c(f)(1)	FMC's answer to to plaintiff com plaint includes but one out of 4 defendants.
7. During a forlift dispute, Carlos Ramos wanted plaintiff to - commit perjury and sign perjurious documents as condition for employment	Plaintiff de claration on ¶7.

8. Eyewitness of the dispute confirmed to Ramos nobody touched D. Ruano. plaintiff's Declaration at (exhibit a).

27. Right after termination FMC charged plaintiff of misconduct to the Unemployment Insurance Board. This Institution trashed - FMC evidence of misconduct and decided on plaintiff's favor.

28. Prior to plaintiff's job dismissal, FMC cad-plate area produced around three dozens of "caustic spills" reported to FMC by plaintiff. (No action or trascendental effect on the employee(s) responsible (es).

29. Defendant do not -- rebuttle all the isuues raised on plaintiff's complaint.

30. Defendant failed to make their "General -- Appearance.

DATED: February 6 1995.

/s/ Moctezuma Flores

(typed) Moctezuma Flores

App 71.

CITATION OF LAW

CODE OF CIVIL PROC. SECTION 2023, (allowance OF Discovery), and the 1987 ammendment.

(a) Misuses of the discovery process -- include but are not limited to the follow:

FAILING TO RESPOND OR TO SUBMIT TO AN AUTHORIZED METHOD OF DISCOVERY.

MAKING WITHOUT SUBSTANTIAL JUSTIFICAtion an UNMERITOROUS OBJECT TO THE DISCOVERY.

MAKING AN EVASIVE RESPONSE TO DISCOVERY.

DISOBEYING A COURT ORDER TO PROVIDE-DISCOVERY.

MAKING OR OPPOSING, UNSUCCESSFULLY & WITHOUT SUBSTANTIAL JUSTIFICATION A MOTION TO COMPEL OR TO LIMIT DISCOVERY.

Unless notice of this motion is given - within 45 days of the service of the response, or on before any specific date to which the propounding party and the responding -- have agreed in writting, the propounding -- party waves any right to compel a further - response to the interrogatories.

CITATION OF LAW

Arbitrator Service of Award.
(Code of Civil Proc. §1283.6)

The neutral arbitrator shall serve a -- signed copy of the award on each party to -- the arbitration personally or by registered- or certified mail or as provided on the agree ment.

CITATION OF LAW.

DEFENDANTS REPONSABILITIES TO APPEAR AFTER FILE OF COMPLAINT.

Code of Civil Proc. §1014.

APPEARANCE

A defendant appears in an action when he -- answeres, demurs, files a notice of motion- to transfer pursuant to Section 396b, gives the plaintiff "written notice of his appea- rance, or when an attorney gives notice of appearance for him. After appearance, a de- fendant or his attorney is entitled to no- tice of all subsequent proceedings of which notice is required to be given. Where a - defendant has not appeared, service of pa-- pers need not be made upon him.

CITATION OF LAW.

(Qualification of an expert eitness)

Code of Civil Procedures §720.

(a) A person is qualified to testify as an expert if he has special knowledge, skill,- experience, training, or education suffici ent to qualify him as an expert on the --- subject to which his testimony relies. --- Against the objection of a party, such spe- cial knowledge, skill, experience, training, or education must be shown before the wit-- ness may testify as an expert.

(b) A witness special knowledge, skill, -- experience, training or education may be-- shown by any otherwise admissible evidence, including his own testimony.

CITATION OF LAW

DEFENDANT COUNSEL HAD TO DISPOSE OF THE ENTIRE ACTION BEFORE PLEADING(s) for-- SUMMARY JUDGMET.

Code of Civil Proc. §437c (f)(1).

A motion for summary adjudication --- shall be granted only if it completely dis- poses of a cause of action, an affirmative- defense , a claim for damages, or an issue - of duty.

CITATION OF LAW

QUALIFICATION OF AN EXPERT WITNESS

Code of Civil Proc. §720

(a) A person is qualified to testify as an expert if he has special knowledge, skill experience, training, or education sufficient to qualify him as an expert on the subject- to which his testimony relates. Against the- objection of a party, such special knowledge skill, experience, training, or education -- must be shown before the witness may testi fy as an expert.

(b) A witness special knowledge, skill, experience, training or education may be -- shown by any otherwise admissible evidence, including his own testimony.

CITATION OF LAW

SAFE AND HEALTHFUL EMPLOYMENT AND PLACE OF EMPLOYMENT.

Labor Law §6400

Every employer shall furnish employment- and a place of employment which are safe &- healthful for the employees therein.

CITATION OF LAW

RELIEF FROM JUDGMENT WHERE SUMMONS DOES NOT RESULT IN ACTUAL NOTICE

Code of Civil Proc. §473.5

(a) When service of a summons has not re-- sulted in actual notice to a party in time- to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file- a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be-- served and filed within a reasonable time,- but in no event exceeding the earlier of:
(i) two years after entry of a default judg ment against him or her; or;
(ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.
(b) A notice of motion to set aside a de--- fault judgment or a default and for leave to defend the action shall designate as the -- time for making the motion a date prescribed- by subdivision (b) of Section 1005, and it-- shall be accompanied by an affidavit showing- under oath that the party's lack of actual-- notice in time to defend the action was not

caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer motion, or other pleading proposed to be filed in the action.

(c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

CITATION OF LAW

RESPONSABILITY FOR WILLFUL ACTS OR NEGLICENCE

Code of Civil Proc. §1714

Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extend of liability in such casés is defined by the Title on Compensatory Relief.

CITATION OF LAW

RETALIATION FOR REFUSAL TO WORK IN VIOLATION OF HEALTH AND SAFETY STANDARDS: ACTION FOR WAGES.

Labor Code § 6311.

No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this sec. or is otherwise not paid because he or she refused to perform work in the performance of which this code, any occupational safety or health standard or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or his or her fellow employees shall have a right of action for wages for the time the employee is without work as a result of the layoff or discharge.

CITATION OF LAW

COMPLIANCE WITH EMPLOYER"s DIRECTIONS

Labor Code §2856.

An employee shall substantially comply -- with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employees.

CITATION OF LAW

CONFORMANCE TO USAGE OF PLACE OF PERFORMANCE.

Labor Code §2857

An employee shall perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable or manifestly injurious to his employer to do so.

CITATION OF LAW

INVESTIGATION OF INDUSTRIAL ACCIDENTS, SERIOUS EXPOSURES, OR OCCUPATIONAL ILLNESSES CORRECTIVE ORDERS.

Labor Code § 6313.

(a) The division shall investigate the causes of any employment accident which is fatal to one or more employees or which results in a serious injury or illness, or a serious exposure, unless the division determines an investigation is unneccessary, in which case the division shall summarize the fact indicating that the accident need not be investigated and the means by which the facts were determined. The division shall establish guidelines for determining the circumstances under which an investigation of these accidents and exposures is unnecessary.

(b) The division may investigate the causes of any other industrial accident or occupational illness which occurs within the state in any employment or place of employment, or which directly or indirectly arises from or is connected with the maintenance or operation of the employment or place of employment, and shall issue any orders necessary to eliminate the causes and to prevent reoccurrence.

CITATION OF LAW

PERJURY AND SUBORNATION OF PERJURY

Penal Code §118

PERJURY DEFINED

Every person who, having taken an oath--- that he will testify, declare, depose, or -- certify truly before any competent tribunal officer, or person, in any of the cases in-- which such an oath may by law of the State of California be administered, willfully &- contrary to such oath, states as true any - material matter which he knows to be false and every person who testifies, declares, - deposes, or certifies under penalty of perjury in any of the cases in which such -- testimony, declarations, depositions, or -- certification is permitted by law of the -- State of California under penalty of perjury and wilfully states as true any material matter which he knows to be false, is guilty of perjury.

This section is applicable whether the -- statement, or the testimony, declaration, -- deposition, or certification is made or subscribed within or without the State of Cali-- fornia.

QUESTIONARY TO CARLOS RAMOS DURING ARBITRATION.

Q. Mr. Ramos: did you received complaint - of drugs distribution at Mr. Flores' place?

A. Yes, My boss Brenda Giammanco gave me a letter sent to her by Moctezuma Flores complaining of drugs distribution on his area. She gave me the letter for investigation.

Q. Did you investigate Mr. Flores allega-- tions?

A. No; we had a meeting and determined -- Moctezuma Flores allegations were not true.

Q. We, who are we?

A. My partner Lupe Lechuga; Supervisor - Gerald Cederholm an myself, we all concluded that his complaint was not true. None of us had seen anything or hear anything.

Q. Did you talk to Mr. Flores about your- decision?

A. No; it was not necessary; now, I do not want to talk anymore about Flores complaint of drugs distribuition.

LETTER SENT TO DEFENDANTS FOR PRODUCTION OF DOCUMENTS ON FEBRUARY 9th 1994.

TO FMC CORP. AND ITS ATTORNEYS ON RECORD.

Pursuant to Code of Civil Procedures --- §2031, Mr. Motezuma Flores demands that you produce for inspection and copying at either FMC premesis or Union Hall, the following -- specific items which are now in your posse - ssion, custody or control.

A written response hereto is required of said Defendant within 20 days after service of this demand, consisting of either a state ment that FMC will comply with this demand, or a statement that FMC lacks the ability to comply with this demand, or an objection to all or part of this demand.

DATED: February 9th 1994.

/s/ Moctezuma Flores

(TYPED) Moctezuma Flores.

p/s

Plaintiff is willing to cover all the-- expenses created on this request. For example: Removal of the file, custody of the same, - copy machine expenses etc..

CITATION OF LAW

Leaving and mailing copies of summons;
(COMPLETION OF SERVICE)

Code of Civil Proc. §415.20

(a) In lieu of personal delivery of a copy - of the summons and of the complaint to the- person to be served as specified in Section 416.10, 416.20, 416.30, 416.40 or 416.50, a- summons may be served by leaving a copy of the summons and of the complaint during -- usual office hours in his or her office -- with the person who is apparently in charge thereof, and by thereafter mailing a copy- of the summons and of the complaint (by first -class mail, postage prepaid to the person- to be served at the place where a copy of the summons and of the complaint were left. Service of s summons in this manner is deemed complete on the 10th day after such mailing.

CITATION OF LAW

UNLAWFUL TERMS AND CONDITIONS
Code of Civil Procedures § 432.5

No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to -- agree, in writing, to any term or condition - which is known by such personal thereof to- be prohibited by law.

GUIDELINES FOR CORRECTIVE ACTION RELEASED TO PLAINTIFF DURING ALTERCATION AT FMC.

	1st offense;	2nd offense;	3rd offense
Insubordination or wilfull refusal of a direct order (must advise employee that refusal will/may result - in discharge.	discharge		
Failure to meet established production standands or -- performance criteria.	verbal warning	written warning	final warning

PLAINTIFF MOVED THE COURT AFTER CIDERHOLM's REFUSAL TO PRODUCE RELEVANT INFORMATION AND DOCUMENTS.

Moctezuma Flores
plaintiff

v # C, 94-20073 EAI.

FMC. Corp.
defendants

(SEALED)
Filed: (May 18 1994)

PLAINTIFF"s WRITTEN INTERROGATORIES TO DEFENDANT.

TO DEFENDANT FMC AND ITS ATTORNEYS OF RECORD.

You are hereby requested to answer, -- fully in writing and under oath by a duly - authorized representative the following --- written interrogatories within thirty days- of the services hereto, pursuant to Code of Civil Procedure Section 2030. In answering- these interrogatories you are requested to provide all information which is available- to you, your agents, representatives employees attorneys, and investigators and not- just such information as in your personal-

possession or knowledge.

If objections are inerposed to any interrrogatories, the complete basis of same - shall be stated. It is contended that any- information sought hereby and previously in "Demand for Production of Documents" are-- privileged by plaintiff-defendant privilege and hopefully we can work-out this interrogatory before conference scheduled for Juhe 20, 1994 and that this interrogatory not be denied in conclusionary terms as in "Request for Production of Documents".

DATED: May 17, 1994.

/s/ Moctezuma Flores

(TYPED) Moctezuma Flores.

CITATION OF A CASE

Petermann v. Inernational brotherhood

((174 C. A. 2d 184; 344 P. 2d. 25)

His status as a member of a Union, the plaintiff should first exhaust his internal remedies before resorting to the courts and-that he has failed to do this.

CITATION OF A CASE

Alvin Daniels vs. FESCO DIVISION

(733 Federal Reporter2nd series page 622.)

Plaintiff was terminated October 24, 1980, and filed his complaint on November--29, 1982 (wronful termination).

An action filed more than two years after--the employee received notification of termination was barred by California's two year --statute of limitations.

CITAION OF A CASE

Wilson v. Blue Cross of south california

(222 Calif. App. 2nd,660; 2712Ca. Rep. 876. (July 1990)

In a defendants' separate statement of-- undisputable facts, Code of Civil Proc. Sec. 437c, Subd. (b) requires that all the facts that are undisputed be set forth in the mo-- ving parties separate statement.

CITATION OF A CASE

H uynh v. Ingersoll-Rand.

(16 Cal. App 4th 825; 20 Cal. Reptr. 2d- 296 [june 1993]

"Misuse" is a defense only when that mis use is the actual cause of plaintiff's injury not when some other defects produces the -- harm. Causation is one of the elements of - the "misuse" affirmative defense and thus -- the burden falls on the defendant to prove - it. At the summary judgment stage, it is not the responsability of the responding party - to produce evidence other factors may have - caused the injury. Instead, it is part of -- the moving party's obligation to complete its proof of the affirmative defense of "misuse".

As indicated earlier, FMC does not or-- at any time tries to convince the Court of the allegued "misconduct" for which plaintiff was fired.

The fatct FMC "jumped" from receiving - complaint to "request for summary Judgment" without having filed an answer, the obvious question arises of how is the findings of -- the Court to decide on favor of thoe defendants.

Additionally, "undisputed Matterial -- Facts" submmited by defense, in clear conflict with the case of Wilson v. Blue Cross (App 88) which requires defendant to present an affirmative defense on the undisputable Matterial Facts to all and each defendant and where the defense's counsel not -- even mention and or includes the name of the defendants on those documents.(App. 47-56).

Aditionally: In order to qualify for -- summary judgment, the defense has to dispose of the entire action. As required Code of - Civil Procedures §437c (f) (1).

The defense's Counsel submmits documentation on behalf of FMC only, leaving the rest of the defendants unprotected of the charges made against them.

Moreover, plaintiff still ignores of how Court ignores and or allows practices of -- FMC's personnèl like:

Cederholms invitation to plaintiff to - be part of drugs distribution as condition for employment. (App. 74; 76; 77; & 78).

Ramos invitation to sign perjurious documents so penalty of suspension and up to termination. (App. 83 bottom).

Assignment to plaintiff to work in dangerous areas or penalty to suspen or terminate employment.

Refusal of Defendant Cederholms to indicate plaintiff's allegued "wrong-- doings". (App. 79)

Cederholm adamantly attitude in his decision that prevension of accident reocurrence was by given plaintiff - a "final warnning". (App. 29).

False testimony of Carlos Ramos to the Court that he performed an investigation of drugs distribuition as when - he previously had stated he never did conducted anything on basis he did not believe plaintiff. (App 81).

False testimony of defendant Cederholms he called the ERT team when in reality nobody saw anything or any spill. (App. 45 & 46).

The Court of Appeals fails to discuss on its opinion the role that played the behavior stated above; and how after those references, the Court finds plaintiff guilty of misconduct.

This issue has been already discussed and decided by a State Judge. (misconduct). (App. 27 & 28).

The Judgment is reversed, and the case is remanded to Court of Appeals for further procedures.